



Application No. 09/682,142

RD-28314  
PATENT  
DIV

Dep't Recf.  
Room #307

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

US PATENT & TRADEMARK  
OFFICE

In re the Application of

SIVAVEC et al.

Group Art Unit: 3673

Application No.: 09/682,142

Examiner: Katherine W. Mitchell

Filed: July 26, 2001

For: PERMEABLE-REACTIVE BARRIER MONITORING  
METHOD AND SYSTEM

REQUEST FOR REFUND

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

OFFICE OF FINANCE  
REFUND BRANCH  
U.S. PATENT & TRADEMARK  
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Sir:

This is a request for a refund with respect to a November 6, 2003 Credit Card Payment Form charge authorization in the amount of \$ 420 purportedly in respect of a two month extension of time to file Applicants' brief. The Request is made for the following reasons.

1. Applicants timely filed a Notice of Appeal in the above captioned matter on July 11, 2003 and their brief (three copies) on September 8, 2003 with a signed APPEAL BRIEF TRANSMITTAL.

2. On November 6, the Examiner in this case advised Applicants' representative that the Brief would not be considered timely filed and the Appeal would be dismissed unless Applicants submitted an executed Brief signature page along with a payment in respect of a two month extension of time.

3. Applicants advised both the Examiner and the Supervisory Primary Examiner (1) that the applicable Rule, 37 C.F.R. 1.192, did not require an executed Brief signature page, (2) that if required, the correct PTO procedure was mandated by 37 C.F.R. 1.192(d) stating:

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(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief....

and (3) that MPEP 1206, paragraph 12.12, entitled "Brief Defective - Unsigned," specifically acknowledged the Rule prescribed procedure by providing a form paragraph stating:

The appeal brief filed on [1] is defective because it is unsigned. 37 CFR 1.33. A ratification properly signed is required.

To avoid dismissal of the appeal, appellant must ratify the appeal brief within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing of this communication, whichever is longer; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

4. Nonetheless, the PTO refused to accept the Brief. Applicants filed a signed Brief signature page and paid the Examiner-required \$ 420 extension fee to avoid dismissal of the Appeal.

5. At a November 12 personal interview with the Examiner and Supervisory Examiner, Applicants' representative requested refund of the extension fee and again directed the PTO's attention to 37 C.F.R. 1.192(d) and the MPEP 1206 form paragraph. In response, the Supervisory Primary Examiner stated that that the PTO had "chosen not to follow that procedure."

6. However, the PTO does not have an option to "choose not to follow" the Patent Rules. The Rules are "establish[ed] regulations... for the conduct of proceedings in the U.S. Patent and Trademark Office." "The rules *govern* the examiners..." (emphasis added). MPEP Introduction.

7. The November 6, 2003 Credit Card Payment in the amount of \$ 420 was improperly required by the PTO and should be refunded.

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8. Applicants request refund of the improperly required November 6, 2003  
Credit Card Payment Form charge authorization in the form of issuance of a credit to the  
charged credit card account in the amount of \$ 420, by December 20, 2003 to avoid  
Petition to the Commissioner.

Respectfully submitted,



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Alexandria, Virginia  
Dec 1, 2003

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